DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office for
Civil Rights

Region 1
Room 1875
John F. Kennedy Federal Bldg.
Government Center
Boston, MA 02203

January 19, 2001

Ms. Claire McIntire
Commissioner
Massachusetts Department of Transitional Assistance
600 Washington Street
Boston, MA 02111

CERTIFIED
MAIL

Re: OCR Complaint Number 01-98-3055

Dear Ms. McIntire:

The Office for Civil Rights (OCR), U.S. Department of Health and Human Services (HHS), has completed its investigation of the above referenced complaint filed on behalf of Ms. Hilda Ramos (H.R.) and Ms. Ateefeewawa Pereira (A.P.) against the Massachusetts Department of Transitional Assistance (DTA). These complaints concern DTA's administration of its Transitional Aid to Families with Dependent Children (TAFDC) program. The TAFDC program is funded, at least in part, by the federal government's Temporary Assistance for Needy Families (TANF) block grant to the States. See Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. § 601 et seq.

Complaint No. 01-98-3055 alleges that DTA discriminated against H.R. and A.P. and other similarly situated persons with learning disabilities by denying these persons an opportunity to participate in DTA's Employment Services Program (ESP), one aspect of the TAFDC program. H.R. and A.P.'s complaint asserts that DTA discriminates against individuals with learning disabilities because there are no appropriate ESP services for clients with learning disabilities, and because DTA has failed to make reasonable accommodations in its policies and practices that are necessary to avoid disability-based discrimination.1/

OCR concludes that DTA violated the rights accorded H.R. and A.P. by Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794) and the HHS implementing regulations, 45 C.F.R. Part 84, and Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131 et seq., and its implementing regulations at 28 C.F.R. Part 35. Moreover, we conclude that DTA fails generally to provide for the needs of learning disabled individuals in the TAFDC program, because:

1/ In addition, on October 21; 1998, OCR received a complaint about DTA's TAFDC program filed by the Alliance for Young Families. This complaint concerns the Young Parents Program, a TAFDC program for young parents and/or pregnant teens under 20 who do not have a high school diploma or GED. The Alliance for Young Families complaint alleges that DTA discriminates against Young Parents Program (YPP) benficiaries with learning disabilities by failing to provide payments to YPP contractors that are sufficient to allow these contractors to provide appropriate services to YPP beneficiaries with learning disabilities. In this Letter of Findings, OCR does not address the Alliance for Young Families complaint; the complaint remains open and continues to be investigated by OCR.

(1) DTA denies individuals with learning disabilities an opportunity to participate in or benefit from the TAFDC program that is equal to the opportunity afforded non-disabled individuals; (2) DTA utilizes methods of administration that have the effect of subjecting qualified individuals with learning disabilities to disability-based discrimination; and (3) DTA fails to make reasonable modifications in TAFDC programs necessary to avoid discrimination against individuals with learning disabilities on the basis of disability. We find that DTA needs to take remedial measures to comply with Section 504 and the ADA. The details of our investigation are provided below.

DETERMINATION

JURISDICTION AND AUTHORITY

The Office for Civil Rights has jurisdiction over these complaints pursuant to Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulations at 45 C.F.R. Part 84. Section 504 and its implementing regulations prohibit discrimination on the basis of disability by recipients of Federal financial assistance. All entities that receive Federal financial assistance from the U.S. Department of Health and Human Services (HHS) either directly or indirectly, through a grant, contract or subcontract, are obligated to comply with the Section 504 statute and regulations. The Massachusetts Department of Transitional Assistance receives Federal financial assistance from the U.S. Department of Health and Human Services for its program, including $911,330,312 in FY 1997, $1,039,240,479 in FY 1998, $460,117,228 in FY 1999 and $469,933,339 in FY 2000.

The complaints were also investigated under Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. § 12131 et. seq. and its implementing regulations at 28 C.F.R. Part 35. Title II of the ADA prohibits discrimination on the basis of disability in State and local government programs and services. The Department of Health and Human Services is designated by federal regulation with the responsibility to investigate ADA complaints against State and local governments with regard to the administration of social services, programs or activities. See 28 C.F.R. § 35.190(b)(3). As persons diagnosed with significant learning disabilities, and in H.R.'s case with mild mental retardation, the complainants meet the definition of persons with disabilities as set forth in the regulations pursuant to Section 504 and Title II of the ADA at 45 C.F.R. § 84.3(j)(1)(I) and 28 C.F.R. § 35.104 respectively. As TAFDC beneficiaries, H.R. and A.P. meet the eligibility criteria for participation in DTA's Employment Services Program, making them qualified persons with a disability as set forth in 45 C.F.R. §84.3(k)(4) and 28 C.F.R. §35.104.

Any TANF program or activity operated or administered by a State or local government must comply with Title II of the ADA. Any program funded with federal TANF funds must comply with Section 504. See 42 U.S.C. § 608(d); 45 C.F.R. § 260.35(a)(2),(3).

PROCEDURAL BACKGROUND AND DESCRIPTION OF COMPLAINTS

The complaint on behalf of H.R. was timely filed with OCR on April 28, 1998. On May 19, 1998, OCR notified DTA of H.R.'s complaint. This complaint was amended to include a complaint by A.P. on March 10, 2000, and OCR notified DTA of the amendment on March 10, 2000. OCR's complaint investigation involved a systemic review of DTA's services with respect to learning disabled TAFDC beneficiaries. OCR evaluated the specific cases of H.R. and A.P. to determine whether DTA's conduct in these matters constituted discrimination on the basis of disability, and to determine whether these cases suggested systemic problems.

The Massachusetts federal and state funded AFDC program, a cash assistance program for income eligible families with dependent children, was renamed TAFDC and modified by statute in 1995 to provide time limited cash assistance, job-skills training and adult basic education and GED programs, job search and placement services, and to require participation in program activities that would lead to gainful employment. M.G.L. c. 118, § 2; Mass. St. 1995, c. 5, §110. Although Massachusetts has adopted a "work first" approach to its TAFDC program, TAFDC beneficiaries have a statutory right to participate in education and job training programs that will increase the potential for economic self-sufficiency. Mass. St. 1995, c. 5, §110 (h); 106 C.M.R. 207.140. TAFDC beneficiaries who are not required to participate in DTA's Employment Services Program (106 C.M.R. 207 *et seq.*) are eligible to participate in education and training programs on a voluntary basis, regardless of whether or not they are subject to the TAFDC work requirement. Id.

H.R. became a DTA client in 1994. H.R. has been diagnosed as having learning disabilities, mild mental retardation, major depressive disorder and post-traumatic stress disorder. H.R. was socially promoted in school, and has a tenth grade education. She reads and writes on a second grade level. H.R. told DTA of her desire to find an educational program which would teach her to read and write, so that she could find a job and become self-supporting. In 1997, H.R. became subject to DTA's two-year limitation on receipt of TAFDC benefits.2/ During H.R.'s time as a DTA client, two educational assessments confirmed her very low literacy level.3/ H.R. also participated in three different basic education or GED preparation programs, but was unable to complete these programs because the work was too difficult for her. DTA was aware of H.R's difficulties in these programs. But, DTA never conducted any screening or assessment of H.R. to determine whether H.R. was disabled, never referred H.R. for an assessment of any possible disability, and never suggested that H.R. should be tested for learning disabilities. In addition,

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2/ Mass. St. 1995, c. 5, § 110(f). H.R. was exempt from the TAFDC work requirement, because her youngest child was less than school age. See Mass. St. 1995, c. 5, §110(j).

3/ SER JOBS for Progress in Fall River, an educational services job training and job placement services provider, tested H.R., found that she tested below the capacity for a GED, and placed H.R. in an adult basic education program. New Directions, a Service Delivery Area (SDA) operated under a contract with DTA, also tested H.R.. The tests administered by New Directions indicated that H.R.'s scores were very low, including a grade level equivalent of 1.9 in reading and 3.2 in math.

DTA never found an appropriate GED or basic education program for H.R. In March 1998, New Bedford Child and Family Service, which provided H.R. with therapy and parenting skills training4/, referred H.R. for a psychological evaluation. This evaluation resulted in a formal diagnosis for H.R. of specific learning disabilities, mild mental retardation, depression and post-traumatic stress disorders. With the assistance of legal counsel, H.R. applied for a disability exemption from DTA after her disabilities were diagnosed. In May 1998, DTA exempted H.R. from the two-year time limit on TAFDC benefits due to diagnoses of depression disorder and affective disorder. Subsequently, H.R. became eligible for Supplemental Security Income (SSI) benefits, but continued to receive TAFDC benefits for her children. Despite the exemptions DTA granted H.R. from the TAFDC time limit and work requirement, and despite her subsequent receipt of SSI benefits, H.R. remained eligible for and interested in receiving ESP services but did not receive them. We understand that H.R. moved from Massachusetts in late 2000.

A.P., who is 22, was tested in the second grade and determined to have special educational needs. A.P. has specific learning disabilities, including dyslexia, and has difficulty with reading, writing and mathematical calculations. A.P. was in special education classes throughout her school years. In 1995, when A.P. was 17 years old and still in the ninth grade, A.P. became pregnant and dropped out of school. When A.P. applied for TAFDC benefits, she told DTA about her learning problems. A.P. was approved for TAFDC benefits in November, 1996, returned to the ninth grade, but dropped out again. DTA told A.P. she had to find a GED program to remain in the TAFDC program, but offered A.P. no assistance in finding a program that would be appropriate for her. A.P. found two successive GED programs on her own, without help from DTA. However, A.P. was unable to do the work in either program, and dropped out. When A.P. turned 20, she was told she would be subject to DTA's two-year time limit on TAFDC benefits. After being dropped from TAFDC for failure to verify school attendance, and then reinstated on appeal, A.P. requested referral to an appropriate GED program or Employment Services (ESP) program that could accommodate her needs related to her learning disability. Prior to late 1999, DTA never referred A.P. to any GED or ESP program. In November or December 1999, A.P. was assigned to a new DTA worker, who referred her to a GED program with a six-month waiting list. A.P. has since requested referral to other appropriate training courses, but DTA has never provided A.P. with a referral. A.P.'s two years of eligibility for TAFDC benefits has expired. A.P.'s benefits were terminated by DTA earlier this month. A.P.'s legal counsel has requested that A.P.'s benefits be reinstated.

In investigating this complaint, OCR obtained documents from DTA, from DTA contractor Service Delivery Areas (SDAs) and from vendors who subcontract with DTA through DTA's contractors. OCR also interviewed employees of DTA, SDAs and vendors. OCR conducted site visits to DTA and SDA offices in New Bedford, Lawrence, Cambridge, Lowell and Boston, and visited vendors in New Bedford, Fall River, and Dartmouth. OCR conducted site visits to and

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4/ H.R. found the New Bedford Child and Family Service program on her own, without a referral from DTA.

interviews in Supported Work Programs in Boston and Fall River. OCR was accompanied on most site visits by Judith Subanney, DTA's Director of Equal Opportunity. OCR interviewed H.R., legal counsel for H.R. and A.P., and other Massachusetts advocates knowledgeable about the TAFDC system. OCR also obtained information about recent findings of the Boston Public Health Commission, which have been conveyed to DTA, concerning former TAFDC beneficiaries in Boston who were terminated from the TAFDC rolls. Finally, OCR reviewed legal pleadings, deposition transcripts, documents produced in discovery and a court ruling in Ramos v. McIntire, No. 98-02154E (Mass. Superior Ct.), H.R. and A.P.'s pending civil lawsuit claiming disability discrimination by DTA.

FINDINGS AND ANALYSIS

OCR's investigation addressed whether DTA violated Section 504 of the Rehabilitation Act and HHS implementing regulations, and/or the ADA and its regulations, by denying H.R., A.P. and other TAFDC beneficiaries with learning disabilities the opportunity to participate in or benefit from the TAFDC program that is equal to the opportunity DTA provides to TAFDC beneficiaries without disabilities. In making its determination, OCR evaluated whether DTA utilized methods of administration that had the effect of subjecting H.R. and A.P. to discrimination on the basis of disability and whether DTA made reasonable modifications in TAFDC policies, practices or procedures that were necessary to avoid disability-based discrimination against H.R. and A.P. and other individuals with learning disabilities.

The regulatory language relevant to this investigation is as follows:

HHS' implementing regulations regarding Section 504 of the Rehabilitation Act of 1973, 45 C.F.R.§§ 84.4(a) and (b), state, in relevant part:

> (a) No qualified disabled person shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination under any program or activity which receives or benefits from Federal financial assistance.
>
> (b)(1) Discriminatory actions prohibited:
> A recipient, in providing any aid, benefit, or service may not, directly or through contractual, licensing or other arrangements, on the basis of disability:
>
> (i) Deny a qualified disabled person the opportunity to participate in or benefit from the aid, benefit or service;
>
> (ii) Afford a qualified disabled person an opportunity to participate in or benefit from the aid, benefit or service that is not equal to that afforded others;
>
> (iii) Provide a qualified disabled person with an aid, benefit or service that is not as effective as that provided to others;....

(b)(4) A recipient may not, directly or through contractual or other arrangements utilize criteria or methods of administration
(i) that have the effect of subjecting qualified disabled persons to discrimination on the basis of disability,
(ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objective of the recipient's program with respect to disabled persons.

The Department of Justice's implementing regulations regarding the application of the ADA to programs of State and local government, 28 C.F.R. § 35.130, state, in relevant part:

(a) No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

(b)(1) A public entity, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability–

(i) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service;
(ii) Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;
(iii) Provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;
(iv) Provide different or separate aids, benefits, or services to individuals with disabilities or to any class of individuals with disabilities than is provided to others unless such action is necessary to provide qualified individuals with disabilities with aids, benefits, or services that are as effective as those provided to others;
(v) Aid or perpetuate discrimination against a qualified individual with a disability by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the public entity's program;...
(vii) Otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(b)(2) A public entity may not deny a qualified individual with a disability the opportunity to participate in services, programs, or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(b)(3) A public entity may not, directly or through contractual or other arrangements, utilize criteria or methods of administration:

(i) That have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability;

(ii) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the public entity's program with respect to individuals with disabilities; or

(iii) That perpetuate the discrimination of another public entity if both public entities are subject to common administrative control or are agencies of the same State....

(b)(7) A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

OCR's investigation revealed that DTA violated these regulations. Our findings concern three types of violations: (1) failing to provide H.R., A.P. and other individuals with learning disabilities with an opportunity to participate in or benefit from the TAFDC program that is equal to the opportunity provided to non-disabled individuals; (2) utilizing methods of administration that have the effect of subjecting H.R., A.P. and other individuals with learning disabilities to discrimination on the basis of disability; and (3) failing to make reasonable modifications necessary to avoid disability-based discrimination against H.R., A.P. and other TAFDC beneficiaries who have learning disabilities.

1. Denial of equal opportunity to learning disabled individuals to participate in or benefit from TAFDC program:

DTA fails to provide individuals with learning disabilities with the opportunity to benefit from or participate in the TAFDC program that is equal to the opportunity DTA provides to non-disabled individuals. In large part, DTA's failure to provide learning disabled individuals with equal opportunity results from inadequacies in the TAFDC assessment process and from DTA's failure to identify the obstacles to employment that confront individuals with learning disabilities and what individuals with learning disabilities need in order to have an equal opportunity to participate in the TAFDC program.

Under the requirements of the federal TANF statute, the DTA is required to assess the "skills, prior work experience and employability" of each TANF recipient who is at least 18 years old or has not completed high school or obtained a GED certificate. 42 U.S.C. § 608(b)(1); 45 C.F.R. § 261.11. Neither DTA nor its contractors or vendors conduct any screening or assessment to determine whether TAFDC beneficiaries have learning disabilities, or to determine whether these disabilities would hinder their ability to benefit from TAFDC education, job skills or

employment programs. For example, as noted above, neither H.R. nor A.P. were ever screened or assessed for learning disabilities by DTA, its contractors or its vendors.

When individuals apply for TAFDC benefits, DTA determines their financial eligibility, and whether they are exempt or non-exempt from time and work requirements. In the initial intake interview, the DTA case worker asks the client if there are "barriers" to employment. The reference to "barriers" is not further defined; there are no specific questions related to learning disabilities. DTA case workers do not ask questions that might aid in determining whether a TAFDC beneficiary has a learning disability. For example, case workers do not generally ask questions regarding a history of special education classes, even for those individuals under the age of 20 and other individuals who are likely to have recently been enrolled in school.5/ DTA does not require its workers to ask applicants if they can read or write. DTA case workers are given little, if any, training or support to help workers determine whether a beneficiary may have a disability, particularly if the disability is not readily apparent.6/ In addition, although case workers may attempt to determine whether a beneficiary has certain disabilities that could be the basis for an exemption from Massachusetts' two-year time limit for receipt of TAFDC benefits and work requirements,7/ there is no express provision in the Massachusetts TAFDC regulations for exempting individuals based on learning disabilities.8/

5/ In an illustrative example, A.P.'s most recent case worker testified in a July 2000 deposition in the Ramos v. McIntire litigation that she believed A.P. may have disclosed that A.P. was in special education classes, and that she recalled A.P. stating that she had difficulty in school and "couldn't keep up with the other students." But, the case worker had never tried to obtain copies of A.P.'s school records since being assigned to work with A.P. in late 1999. Deposition of Dianne Juarez, pages 38-39 (July 20, 2000). Moreover, appears that DTA did not obtain A.P.'s school records prior to Ms. Juarez' assignment to A.P.'s case, as Ms. Juarez also testified that she had never seen A.P.'s school records in A.P.'s DTA file. See deposition testimony of Dianne Juarez, page 39.

6/ In a 1998 deposition in the Ramos litigation, DTA's Director of Employment Services for the Employment Services Program testified that she was unaware of any training for DTA staff to recognize learning disabilities or other cognitive impairments. Deposition transcript of Margo Blaser, page 153 (July 28, 1998). In a July 2000 deposition in the Ramos litigation, A.P.'s most recent case worker testified that she had never received training on how to recognize whether an individual may have a learning disability. Deposition transcript of Dianne Juarez, page 11.

7/ See Mass. St. 1995, c. 5, § 110(e)(1).

8/ See 106 CMR § 203.530, 106 CMR § 203.540, 106 CMR § 203.545 (regarding disability exemptions). One provision of Massachusetts' TAFDC regulations does, however, provide for a disability exemption for older individuals who are illiterate and who can do only sedentary work. See 106 CMR § 203.545(C)(5).

Moreover, DTA has made no effort to determine the number of individuals with learning disabilities who receive TAFDC benefits, even though studies in other states have indicated that approximately 25% to 40% of TANF beneficiaries have learning disabilities. DTA has not obtained or analyzed any information regarding whether individuals with learning disabilities have an equal opportunity to participate in the TAFDC program.9/

DTA's Employment Services Program (ESP), a component of the TAFDC program, provides activities such as basic and secondary education, supported work, job search or skills training. All TAFDC beneficiaries, even those exempt from work requirements and time limits, may participate in the ESP.10/ State regulations require DTA to develop an annual Employment Development Plan for all ESP beneficiaries, and require that the Employment Development Plan include, among other things, a description of the beneficiary's employment goal and the activities needed to meet this goal.11/

9/ For example, in 1998, two high-level DTA administrators testified in depositions in the Ramos litigation that DTA had not gathered information about individuals with disabilities in the TAFDC program. See deposition transcript of Judith Subanny, DTA Director of Equal Opportunity, pages 66-71 (Sept. 1, 1998) (testifying that she had never been requested by anyone in DTA to give thought to how to address the needs of disabled individuals in DTA education and training programs, that she had never had any conversations with anyone within DTA regarding how issues relating to learning disabilities might impact DTA's Employment Services Program, and that she had never undertaken, or been asked to undertake, any analysis of the impact on people with disabilities of DTA's "work first" approach to welfare reform as reflected in the TAFDC program). See also deposition testimony of Margo Blaser, Director of Employment Services for DTA's Employment Services Program, page 97 (testifying that, to her knowledge, no one in DTA or in the Employment Services Program had done any analysis of what impact, if any, a "work first" welfare reform approach has on individuals with disabilities). See also letter from DTA Director of Equal Opportunity to OCR (July 16, 1999) (responding to an inquiry from OCR about the number of TAFDC beneficiaries with learning disabilities by stating that DTA does not collect data on TAFDC beneficiaries with learning disabilities).

10/ See Mass. St. 1995, c. 5, § 110(h); 106 CMR § 207.000(E).

11/ See 106 CMR § 207.110(A)(3), (4) (setting out criteria for EDP development and content of EDP). With respect to H.R. and A.P., however, DTA apparently did not comply with these regulations. In our review of A.P.'s DTA file, we found only an incomplete Employment Development Plan. H.R.'s case worker testified in her deposition that H.R.'s only Employment Development Plan was developed by an ESP worker in the New Bedford DTA office in October 1996, and that to the case worker's knowledge no Employment Development Plans had been developed for H.R. after October 1996. Deposition transcript of Anne Verissimo, pages 32-34 (Aug. 26. 1998).

Service Delivery Areas (SDAs) contract directly with DTA to deliver employment and training services for the ESP.12/ SDAs conduct an initial interview to obtain information about the beneficiary, including the beneficiary's educational and employment background and a discussion of available services to assist the beneficiary in obtaining and maintaining a job. In addition, SDAs administer a basic test of educational level (most SDAs use the TABE (Test of Adult Basic Education)), and conduct a subsequent interview. SDAs refer TAFDC beneficiaries who score at the fourth grade level or higher on the TABE test to ESP vendors (community-based agencies, schools and other non-profit organizations), who contract with SDA to provide TAFDC beneficiaries with ESP services.

OCR found, however, that the assessment process utilized by SDAs does not include any mechanism to ascertain whether TAFDC beneficiaries are disabled, including determining whether beneficiaries have learning disabilities that would interfere with their ability to participate in the ESP. One SDA Executive Director told OCR, "We don't bother asking DTA clients about disabilities, because we know TANF clients are automatically eligible for our services. It isn't important to ask them about disabilities to determine their eligibility, so we don't."

Even if ESP providers wanted to refer TAFDC beneficiaries for an assessment of possible disabilities, DTA does not appear to have a standard mechanism for these referrals. In 1998, the ESP's Director of Employment Services testified in a deposition in the Ramos v. McIntire litigation that she was unaware of any DTA procedures by which ESP providers could refer TAFDC beneficiaries for diagnostic testing if ESP providers suspect that the recipient has some form of disability.13/ SDA staff told OCR that they had, on occasion, referred public assistance beneficiaries to the Massachusetts Rehabilitation Commission (MRC) for a full assessment of learning disabilities. Through OCR's investigation, however, we could not discern any established or routine system for making such referrals.14/

Even if a TAFDC beneficiary obtains a TABE score below the fourth-grade level, the SDA does not assess the beneficiary for disabilities, including learning disabilities that manifest themselves in very low literacy levels. For example, H.R. was never screened or assessed for disabilities by the New Directions, the New Bedford SDA, even after the results of an educational achievement test indicated that H.R. reading skills were below the second grade level. Beneficiaries who

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12/ It is our understanding that Service Delivery Areas are now known as Workforce Investment Areas. During our investigation, the term Service Delivery Area was in use, so that term, and the abbreviation SDA, is used in this letter.

13/ Deposition testimony of Margo Blaser, page 101.

14/ For example, we learned that New Directions, the New Bedford SDA that administered an educational test to H.R., has referred 17 individuals to the MRC over the past five years. New Directions did not, however, refer H.R. to the MRC for an assessment.

score below the fourth grade level on the TABE test are considered "difficult to serve" and may be verbally referred to programs or agencies outside the DTA system such as a local school system for adult basic education or the MRC.15/ With respect to the availability of MRC services, however, we learned that TAFDC beneficiaries who have specific learning disabilities, but who do not have any disabilities in addition to a learning disability, may not be eligible for MRC services.16/

Our investigation also determined that apart from the issue of assessment, DTA, SDAs and ESP vendors do not provide services that are appropriate for individuals with learning disabilities. DTA's ESP Director of Employment Services testified in her deposition in the Ramos litigation that she was unaware of anyone in DTA having done an analysis of what education and training services are most appropriate for individuals with disabilities, including individuals with learning disabilities, and that she was unaware whether any ESP components had staff trained to recognize and respond to the needs of individuals with learning disabilities.17/ DTA's Director of Equal Opportunity testified in a September 1998 deposition in the Ramos litigation about a phone conversation with H.R.'s legal counsel, in which counsel asked the Director if DTA had any programs for individuals with disabilities, and the Director responded "Not that I'm aware of."18/.

15/ For example, one of the adult basic education programs H.R. attended referred H.R. to the MRC for possible services, but MRC told H.R. that it could only place her in a work program, and could not assist her with her educational needs.

16/ An MRC Deputy Commissioner gave deposition testimony in the Ramos litigation that MRC serves individuals who, as a result of an individual assessment, are identified as having the most severe functional limitations. Deposition transcript of Warren McManus, MRC Deputy Commissioner, Vocational Rehabilitation Services Division, pages 6-8, 10 (Oct. 6, 1998). The Deputy Commissioner testified that individuals who have specific learning disabilities, but who do not have any additional disabilities, are, in general, unlikely to be sufficiently severely disabled to receive MRC services. Deposition transcript of Warren McManus, pages 15-17, 68.

17/ Deposition testimony of Margo Blaser, pages 108-109, 153.

18/ Deposition testimony of Judith Subanny, pages 47-49. In addition, Dianne Juarez, A.P.'s most recent case worker testified in July 2000 that she did not think she had ever been provided with a list of job training providers who have staff trained to work with individuals with learning disabilities. Deposition transcript of Dianne Juarez, pages 11, 50-51. Katherine Bourne, education coordinator for DTA's Employment Services Program, testified in December 1999 that to her knowledge no list of appropriate adult basic education or ESP services or for adults with learning disabilities existed. Deposition transcript of Katherine Bourne, pages 106-107 & deposition exhibit 10 (Dec. 29, 1999).

The lack of appropriate adult education programs for individuals with learning disabilities, and the lack of adequate information about available programs, results in DTA workers' inability to provide TAFDC beneficiaries with the assistance they require to have an equal opportunity to participate in the TAFDC program. For example, H.R.'s DTA case worker knew that H.R. was looking for an educational program, and that H.R. believed herself to be a slow learner.19/ The case worker's assistance to H.R. in finding a program, however, was limited to H.R.'s case worker giving H.R. referrals to agencies that the case worker thought might be able to help, even though it is unclear whether the worker's beliefs about these programs were accurate.20/ DTA's failure to contract with adult education programs that are appropriate for individuals with learning disabilities is further exemplified by the fact that H.R. was unable to successfully complete any of the GED or adult basic education programs in which she was enrolled, although her attendance in these programs was good and although she consistently expressed to program providers her desire to learn how to read and write.21/

In addition, although some individuals with low TABE scores (as well as other individuals with severe and/or multiple barriers to employment) are referred to an ESP component called the Supported Work Program, there is no indication that this program is appropriate for TAFDC beneficiaries with learning disabilities because Supported Work Program providers do not assess whether TAFDC beneficiaries are disabled, do not train Supported Work Program staff to assist individuals with learning disabilities, and have no systematic method of serving TAFDC beneficiaries with learning disabilities.

19/ In a 1998 deposition in the Ramos litigation, H.R's case worker testified that H.R. had described herself to the case worker as someone for whom it took "a longer time ... to learn something than somebody else," and that the case worker was also aware of H.R.'s difficulty with the courses that lead to a GED. Deposition transcript of Anne Verissimo, pages 32, 38 (Aug. 26, 1998).

20/ According to the case worker's deposition testimony in the Ramos litigation, after learning that H.R.'s test scores were too low for the GED program at SER JOBS, the case worker referred H.R. to the New Directions program believing "[t]hat possibly they could help her," even though the case worker did not know whether New Directions actually had programs for individuals who tested too low for a GED program. Deposition testimony of Anne Verissimo, pages 41-42. Similarly, the case worker testified that she discussed with H.R. participating in an adult basic education program at New Bedford High School, but that the case worker never had conversations with anyone from the high school to determine whether the adult education program included services that would be appropriate for H.R. Deposition transcript of Anne Verissimo, pages 52-53.

21/ In a civil discovery response in the Ramos litigation, DTA stated that it did not know whether any ESP program to which H.R. and A.P. were referred had staff specially trained to teach individuals with learning disabilities. See Interrogatory Response 5, Commissioner's Response to Plaintiffs' Second Set of Interrogatories to the Defendant, Ramos v. McIntire.

As a result of its failure to recognize that learning disabilities constitute a significant barrier to successful TAFDC program participation, DTA fails to provide programs or services sufficient to ensure that individuals with learning disabilities have the opportunity to benefit or participate in the TAFDC program that is equal to the opportunity afforded non-disabled individuals. In the absence of any basic screening or assessment of TAFDC beneficiaries who may have learning disabilities and in the absence of any other systemic information about how individuals with disabilities have fared in the TAFDC program, DTA is unable to determine the number of clients with learning disabilities needing assistance or to identify the resources that are needed to provide appropriate services and accommodations for these individuals. Thus, although the DTA has set up a system of contractors and vendors to provide basic education, training, job skills and job search services for TAFDC beneficiaries, TAFDC beneficiaries who have learning disabilities are denied equal access to these services in violation of the ADA and Section 504.

2. Using criteria or methods of administration that have the effect of subjecting qualified individuals with learning disabilities to discrimination on the basis of disability

The ADA's regulatory prohibition against discriminatory methods of administration "refers to official written policies" of a public agency "and to the actual practices" of the agency.22/ OCR's investigation determined that the actual practices of DTA have the effect of subjecting qualified individuals with learning disabilities to discrimination on the basis of their disability.

The disability-based discrimination to which H.R., A.P. and other TAFDC beneficiaries with disabilities have been subjected -- the denial of equal opportunity to benefit from the TAFDC program -- is a result of the fact that DTA provides little, if any, training or technical assistance to DTA employees, or to DTA contractors or vendors, regarding learning disabilities among the TAFDC population. DTA does not train its employees to identify or assess whether TAFDC beneficiaries may have learning disabilities23/, to refer TAFDC beneficiaries with learning

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22/ See 28 C.F.R. Part 35, Appendix A, § 35.130, at 467 (1996). The ADA and its implementing regulations prohibit criteria and methods of administration that have the effect of subjecting individuals with disabilities to discrimination, whether those methods of administration are utilized "directly" by a public agency "or through contractual or other arrangements." 28 C.F.R. § 35.130(b)(3)(i). HHS Section 504 regulations contain a similar prohibition. See 45 C.F.R. § 84.4(b).

23/ As noted previously, in a July 2000 deposition in the Ramos litigation, A.P.'s most recent case worker testified that she had never received training regarding how to recognize whether an individual may have a learning disability. This worker also testified that she had never received training on the ADA or Section 504 of the Rehabilitation Act. Deposition transcript of Dianne Juarez, page 11.

disabilities to appropriate services24/, to make modifications in programs, policies or practices, to provide disabled individuals with auxiliary aids or to otherwise accommodate these individuals' needs. In a September 1998 deposition in the Ramos litigation, DTA's Director of Equal Opportunity testified that although DTA managers and supervisors had received training regarding the ADA, including training concerning accommodating individuals with disabilities, this training was not provided to non-supervisory and non-managerial DTA staff. Moreover, the manager and supervisor training did not include any discussion of access to educational programs for individuals with cognitive impairments.25/ The Director of Equal Opportunity also testified that DTA had never arranged for ESP providers to receive training concerning the ADA, that the Director did not know whether DTA requires ESP providers to obtain training regarding their ADA obligations, and that the Director did not know whether any ESP providers have staff trained to accommodate or teach individuals with learning disabilities.26/ DTA's Director of Employment Services for the ESP testified in her July 1998 deposition in the Ramos litigation that she had never had or directed any communication with ESP community service program providers regarding their obligations to meet the needs of individuals with disabilities.27/ DTA contractors and vendors told OCR that they have never received training, technical assistance or guidance from DTA regarding the identification or assessment of TAFDC beneficiaries with learning disabilities or the provision of appropriate services, auxiliary aids or other accommodations for these individuals.

24/ For example, DTA's Director of Equal Opportunity testified although she thought the Massachusetts Rehabilitation Commission (MRC) may be an appropriate place to refer learning-disabled TAFDC beneficiaries for services, the Director was unaware of any training for DTA workers concerning referrals to MRC, and that she herself had never caused a TAFDC beneficiary to be referred to the MRC. Deposition testimony of Judith Subanny, pages 49, 57-58. Similarly, DTA's Director of Employment Services for ESP testified in a July 1998 deposition in the Ramos litigation that she was unaware of any written instructions to DTA case workers regarding making appropriate referrals to MRC. Deposition transcript of Margo Blaser, page 67. Ms. Blaser also testified that she was unaware of any training sponsored by the DTA central office, although she described a proposal for a pilot program with two DTA offices involving referrals of some individuals to MRC and cross-training of DTA and MRC staff. Deposition transcript of Margo Blaser, pages 68-77.

25/ Deposition testimony of Judith Subanny, pages 40-42. Similarly, Ms. Subanny testified that she had neither provided instruction or caused anyone else at DTA to provide instruction to DTA workers regarding what steps they should take if they encounter a TAFDC recipient who cannot read, and that she could not remember whether DTA's ADA training for managers and supervisors included training regarding services for individuals who cannot read or can only read with difficulty. Deposition testimony of Judith Subanny, pages 56-57.

26/ Deposition testimony of Judith Subanny, pages 42, 72.

27/ Deposition testimony of Margo Blaser, page 43.

OCR also learned through its investigation that DTA had been offered, but did not accept, no-cost training for its staff through the Bridges to Practice program at the Massachusetts Department of Education. This program would have provided training to DTA staff to enable them to screen and/or assess TAFDC beneficiaries with learning disabilities, and would have trained DTA vendors to develop strategies in teaching to better help persons with learning disabilities. When OCR asked DTA why the agency had not availed itself of this training opportunity, DTA told OCR that DTA staff had been so overwhelmed with training that DTA did not want to implement additional training programs.

H.R., A.P. and other TAFDC beneficiaries with learning disabilities have also been subjected to disability-based discrimination as a result of DTA's failure to monitor its own programs, and the programs of its contractors and vendors, to determine whether these programs are being operated in a discriminatory manner with respect to individuals with learning disabilities. Such monitoring might properly include determining whether learning disabled TAFDC beneficiaries have an opportunity to participate in and benefit from TAFDC that is equal to the opportunity granted non-disabled individuals, whether DTA, its contractors and vendors make reasonable modifications necessary to avoid discrimination against learning disabled individuals, whether DTA, its contractors and vendors have in place nondiscriminatory policies and procedures and whether the staff of DTA, contractors and vendors are properly implementing these policies and procedures.28/

In sum, DTA's employs discriminatory methods of administration, premised on DTA's failure to acknowledge learning disabilities as a substantial barrier to equal access to the TAFDC program, and its failure to adopt policies and practices that do not result in discriminatory services to people with disabilities.

3. Failure to make reasonable modifications necessary to avoid discrimination on the basis of disability in the TAFDC program

DTA fails to ensure that individuals with learning disabilities have an equal opportunity to benefit from or participate in the TAFDC program because DTA does not make reasonable modifications to its programs, policies and practices that are necessary to avoid disability-based

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28/ Appropriate monitoring of DTA and its vendors would be consistent with DTA's obligation to evaluate its services, policies and practices for compliance with the ADA and to modify any services, policies or practices that do not comply with the ADA. See ADA regulations at 28 C.F.R. § 35.105. In a September 1998 deposition, DTA's Director of Equal Opportunity testified that as a result of training from the Massachusetts Commission Against Discrimination, the Director believed that a self-evaluation plan should be created upon changes to a public agency's facilities or programs, and that DTA created a self-evaluation plan in 1994, but that DTA had not undertaken a self-evaluation plan after the changes in its public cash assistance program created by Massachusetts' 1995 welfare reform legislation. Deposition transcript of Judith Subanny, pages 59-65.

discrimination. DTA's failure to make reasonable modifications is exemplified by its failure to incorporate into its assessment process any efforts to determine whether TAFDC beneficiaries have learning disabilities, whether a learning disability impacts beneficiaries' ability to participate in or benefit from TAFDC programs, and whether reasonable modifications to the program or to program participation requirements might be made in order to ensure equal access. Because DTA does not take steps to learn what TAFDC beneficiaries with learning disabilities need in order to have an equal opportunity to participate in the TAFDC program, DTA has no basis upon which to determine what modifications would be reasonable in terms of meeting beneficiaries' needs while not resulting in an undue burden on or fundamental alteration of the TAFDC program.29/ In the absence of reasonable modifications, TAFDC beneficiaries with learning disabilities have not been afforded an equal opportunity to benefit from the TAFDC program.

Our investigation also found that beneficiaries with learning disabilities are subjected to disability-based discrimination because DTA, its contractors and vendors take few steps to modify policies, practices or procedures in order to ensure that TAFDC beneficiaries with learning disabilities who score below the fourth grade level on the TABE test have an equal opportunity to participate in or benefit from the TAFDC program. For example, after completing an assessment of H.R.'s educational level, New Directions, the New Bedford SDA, determined that its vendors did not have programs for individuals with the low level of educational achievement reflected in H.R.'s test scores. New Directions did not take steps to determine whether H.R.'s low test scores were related to a possible disability, or whether New Directions or its vendors could make reasonable program modifications in order to serve H.R.. Rather, New Directions decided to verbally refer H.R. outside the SDA vendor network, to the adult literacy program at the New Bedford High School. Our investigation did not discover any steps taken by New Directions to determine whether the New Bedford High School adult education program would have been appropriate for H.R.. Moreover, the verbal referral system described to us is inadequate because there are apparently no provisions to provide follow-up services for those TAFDC beneficiaries who require such services in order to have an equal opportunity to participate in the ESP. For example, New Directions told OCR that it does not follow up on verbal referrals, and that it is up to the TAFDC beneficiary to decide whether she will act on the referral.

OCR's investigation also revealed that DTA appears to have few policies or procedures regarding the provision of TAFDC services to individuals with disabilities, and DTA's obligation to make reasonable modifications to its policies and procedures. The limited policy guidance DTA has provided to staff regarding the needs of disabled TAFDC beneficiaries does not include any specific information about individuals with learning disabilities. We reviewed a "Field Operations Memo," issued by DTA to its staff in October 1998, which informs staff of DTA's

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29/ As discussed below, the ADA and Section 504 provides that public entities need not make modifications that would result in a fundamental alteration of or an undue burden to the entity's programs.

obligation to comply with the ADA and to provide reasonable accommodations for "qualified disabled recipients" in order to allow these individuals "to meet Department requirements and utilize Department services."30/ The October 1998 Field Operations Memo refers to individuals with physical or mental disabilities, but does not include any examples of specific disabilities, including learning disabilities. In its brief discussion of reasonable accommodations, the October 1998 Field Operations Memo does not include any mention of beneficiaries with learning disabilities or how DTA might accommodate the needs of these individuals.31/ The October 1998 Field Operations Memo directs DTA staff to contact DTA's Director of Equal Opportunity if a TAFDC beneficiary informs staff, or staff "otherwise become aware," of a physical or mental condition that is preventing the recipient from meeting DTA requirements or utilizing DTA services.32/ Our investigation did not obtain any information indicating that DTA employees are using the information in the October 1998 Field Operations Memo to obtain reasonable accommodations for TAFDC beneficiaries with learning disabilities. In March 2000, DTA's Director of Equal Opportunity told OCR that she had never received a request for accommodations for a TAFDC beneficiary with learning disabilities, or a complaint that a learning-disabled beneficiary was unable to complete a TAFDC program.33/

In addition, DTA's Director of Equal Opportunity testified in her deposition that she did not know whether any ESP programs in Massachusetts had staff who were trained to accommodate individuals with learning disabilities.34/ This testimony is consistent with the information OCR obtained from the DTA contractors and vendors we interviewed. These contractors and vendors

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30/ Massachusetts Department of Transitional Assistance Field Operations Memo 98-50 (Oct. 23, 1998).

31/ Field Operations Memo 98-50 contains one example of an accommodation for an individual with severe depression, one example of an accommodation for an individual with mobility impairments, and another example of an accommodation for an individual whose unspecified disability prevents in-person travel to a DTA office. In the context of discussing whether a disabled TAFDC recipient meets the "essential elements" of the TAFDC program, Field Operations Memo 98-50 includes two examples of individuals with unspecified disabilities.

32/ DTA repeated this directive to staff in a September 1999 Field Operations Memo regarding cooperation with child support enforcement requirements. See Massachusetts Department of Transitional Assistance Field Operations Memo 99-25 (Sept. 1, 1999).

33/ In addition, just prior to the issuance of Field Operations Memo 98-50, in September 1998, DTA's Director of Equal Opportunity testified in a deposition in the Ramos litigation that she had never been involved in arranging for a reasonable accommodation for any TAFDC recipient who was a participant in the ESP program. Deposition transcript of Judith Subanny, pages 67-68.

34/ Deposition testimony of Judith Subanny, page 72.

were unanimous in stating that they had never received any guidance from DTA regarding program modifications, or accommodations or auxiliary aids for TAFDC beneficiaries with disabilities. Although most contractors and vendors told OCR that they would have tried to provide any "extra help" or accommodation needed by TAFDC beneficiaries with learning disabilities, contractors and vendors also stated that they weren't sure who would pay for specific accommodations or auxiliary aids. Contractors and vendors also told OCR that they had never been told by DTA what aids they would be required to provide, or what their obligation was with respect to program modifications. Moreover, we learned that ESP "accommodations" for persons with disabilities consist largely, if not entirely, of additional hours of one-on-one or small group work with one beneficiary or a group of beneficiaries. No matter how well intentioned, this type of "extra help" is not necessarily appropriate to meet the needs of learning disabled TAFDC beneficiaries, particularly because it is unconnected to any assessment of the beneficiaries' specific disabilities or needs.

As discussed in this letter, DTA fails to provide TAFDC beneficiaries with learning disabilities with an equal opportunity to benefit from the TAFDC program. By not making reasonable modifications in its policies, practices and procedures, DTA has failed to address the disability-based discrimination to which beneficiaries with learning disabilities are subjected.

CONCLUSIONS

Based on our investigation, OCR concludes that DTA has violated the ADA and Section 504 by: (1) failing to afford H.R. and A.P. an opportunity to participate in or benefit from the TAFDC program that is equal to the opportunity DTA provides to TAFDC beneficiaries who are not learning disabled; (2) providing H.R. and A.P. with TAFDC services that are not as effective in affording equal opportunity to obtain the same result, gain the same benefit or reach the same level of achievement as TAFDC beneficiaries without disabilities; (3) limiting H.R. and A.P.'s enjoyment of the rights, privileges, advantages or opportunities enjoyed by non-disabled TAFDC beneficiaries; (4) utilizing methods of administration that had the effect of subjecting H.R. and A.P. to discrimination on the basis of disability; and by (5) failing to make reasonable modifications in TAFDC policies, practices or procedures that were necessary to avoid disability-based discrimination against H.R. and A.P. See ADA regulations at 28 C.F.R. § 35.130(b)(1), 28 C.F.R. § 35.130(b(3) and 28 C.F.R. § 35.130(b)(7), and Section 504 regulations at 45 C.F.R § 84.4(b)(1) and 45 C.F.R. § 84.4(b)(4).35/

35/ OCR's concludes that DTA violated H.R.'s rights under Section 504 and Title II of the ADA despite H.R.'s exemptions from DTA time limits and work requirements, her eventual receipt of SSI benefits and her recent move from Massachusetts. The disability-based discrimination identified in our investigation occurred while H.R. resided in Massachusetts and while she was a TAFDC "recipient" (receiving TAFDC benefits first for herself and her children and, after H.R.'s receipt of SSI, for her children only) within the meaning of Massachusetts law. See Mass. St. 1995, c. 5, § 110(a).

In addition to its specific findings with respect to H.R. and A.P., OCR finds that DTA discriminates generally against individuals with learning disabilities in its TAFDC program. OCR's finding of systemic discrimination is based on the information it obtained regarding the policies, practices and procedures of DTA and DTA contractors and vendors, with respect to TAFDC beneficiaries with learning disabilities.36/

As described above, our investigation revealed that DTA has no policies, procedures or practices designed to determine whether TAFDC beneficiaries have learning disabilities. We also learned that neither DTA nor the Service Delivery Areas (SDAs) with which DTA contracts to administer the Employment Services Program (ESP) for TAFDC beneficiaries have any established or routine mechanism for assessing whether TAFDC beneficiaries who are assigned to ESP have learning disabilities. We learned that neither DTA nor SDAs have developed programs that can meet the needs of individuals with learning disabilities. We learned that neither DTA nor SDAs have any established or routine mechanism for referring TAFDC beneficiaries with learning disabilities to ESP programs, including basic and secondary education programs, that can meet their needs. Our investigation also revealed that neither DTA nor SDAs take adequate steps to ensure that TAFDC programs make reasonable modifications in order to avoid disability-based discrimination against individuals with learning disabilities, including individuals, such as H.R. and A.P., whose disabilities manifest themselves in part in very low literacy levels.

OCR has concluded that these practices denied H.R. and A.P. the opportunity to enjoy the same level of access to the TAFDC program as DTA affords to TAFDC beneficiaries who are not disabled. H.R. and A.P. were unable to gain the same benefit from the TAFDC program as non-disabled TAFDC beneficiaries because the nature and extent of H.R. and A.P.'s disabilities were not identified or assessed by the DTA or its contractors, and because neither the DTA nor its contractors provided H.R. and A.P. with an ESP program that was appropriate for their needs. Moreover, in failing to formally and effectively refer H.R. and A.P. to GED or other basic education programs that could meet the needs of individuals with learning disabilities, DTA failed to make reasonable modifications in its program that were necessary to avoid disability-based discrimination against H.R. and A.P.. DTA and its contractors also failed to ensure that the GED and other basic education programs either provided by contractors, or to which H.R. and A.P. were referred, made reasonable modifications in order to avoid disability-based discrimination against H.R. and A.P. Thus, the benefit DTA provides to non-disabled persons -- access to a program designed to move TAFDC beneficiaries from welfare to work and self-sufficiency -- was denied to H.R. and A.P. on the basis of these individuals' disabilities.

36/ OCR does not now reach a conclusion about the extent to which individuals who have disabilities other than learning disabilities have an equal opportunity to benefit from the TAFDC program. OCR may, however, examine this issue in depth in conjunction with its ongoing civil rights enforcement activities. OCR would welcome the opportunity to discuss issues affecting individuals with disabilities in addition to learning disabilities as part of the voluntary compliance process discussed at the end of this letter.

Through structuring and operating the TAFDC program in the manner described above, DTA utilized methods of administration that had the effect of subjecting H.R. and A.P. to discrimination on the basis of disability. Moreover, because these methods of administration constitute DTA's actual and routine practices, they have the systemic effect of subjecting TAFDC beneficiaries with learning disabilities to discrimination.

The fact that DTA utilizes contractors and vendors in its administration of the TAFDC program does not insulate DTA from a finding that DTA has violated Section 504 and the ADA. Implementing regulations for Section 504 and the ADA state clearly that a recipient of federal funds (in the context of Section 504) or a State or local government program (in the context of the ADA), may not directly or indirectly (e.g., "through contractual or other arrangements") put into place, or allow to be put into place, a system or program which has the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability. Thus, the critical question in a Section 504 or ADA analysis is whether DTA, in administering the TAFDC program, has directly or indirectly put into place, or allowed to be put into place, a system or program that has the effect of subjecting individuals with disabilities to discrimination. As part of its overall administration of the TAFDC program, DTA is responsible for ensuring that disabled TAFDC beneficiaries have an opportunity to participate in all program benefits and services that can potentially move them from dependence to self-sufficiency that is equal to the opportunity afforded TAFDC beneficiaries without disabilities. If a system is in place that does not provide individuals with meaningful access to the TAFDC program on the basis of disability, DTA has a responsibility under the ADA and Section 504 regulations to make the modifications necessary to provide meaningful access, unless such modifications constitute a fundamental alteration of the TAFDC program. OCR is aware that DTA includes in its ESP vendor contracts a requirement that vendors comply with the ADA. This contractual requirement is insufficient by itself to discharge DTA's responsibilities under the ADA and Section 504, however, in light of the problems identified in our investigation.

Neither the ADA nor Section 504 requires modifications that "fundamentally alter" the nature of a governmental program or activity. Nothing in our investigation to date leads to the conclusion that making reasonable modifications to the TAFDC program to facilitate equal access to the program by learning disabled TAFDC recipients would result in a fundamental alteration of the program. Both the governing state and federal statutes and state regulations for the TAFDC program support our conclusion that providing H.R., A.P., and other learning disabled TAFDC beneficiaries with an adequate assessment and an ESP program (including reasonable modifications) appropriate to their needs would be consistent with the TAFDC program's goals of "promoting the principles of family unity, individual responsibility and self-reliance and ... structur[ing] financial and economic incentives and disincentives that promote such principles...." See Mass. St. 1995, c. 5 § 110 (describing purposes of TAFDC program). See also Mass. St. 1995, c. 5, § 110 (h) (encouraging the implementation of an individualized employment development plan "designed to enable said recipient to attain economic self-sufficiency"); see also 42 U.S.C. § 601(2) (federal TANF statute, stating that one purpose of the statute is to "end the dependence of needy parents on government benefits by promoting job

preparation, work and marriage"). In addition, through this investigation and through other civil rights enforcement activities, OCR has become aware that numerous other States have recognized the need to provide TANF beneficiaries with learning disabilities with equal access to TANF programs through reasonable program modifications. Several states have incorporated the screening and assessment of and the provision of appropriate services to individuals with learning disabilities into their TANF programs.37/ As noted above, our investigation revealed that DTA had the opportunity to participate in a program that would have provided free training to DTA staff concerning individuals with learning disabilities, but that DTA chose not to avail itself of this opportunity. We are unaware of any formal agreements between DTA and sister agencies, such as the State Department of Education or the Massachusetts Rehabilitation Commission, that would train DTA staff about learning disabilities or otherwise aid DTA in providing appropriate services to TAFDC beneficiaries with learning disabilities.38/ We are also aware that the plaintiffs in the Ramos litigation have alleged that the cost of assessments to determine whether TAFDC beneficiaries are disabled may be borne by the Massachusetts Division of Medical Assistance upon request from DTA. All of these factors lead to our conclusion that the modifications necessary to avoid discrimination against individuals in the TAFDC program would not constitute a fundamental alteration of the program.

OPPORTUNITY FOR VOLUNTARY COMPLIANCE

When an OCR investigation indicates that a recipient of HHS assistance or a covered entity under Title II of the ADA has failed to comply with applicable regulations, the recipient is given an opportunity to take the corrective actions necessary to remedy the violation. If compliance cannot be secured by voluntary means, it may be effected by suspension or termination of, or refusal to grant or to continue Federal financial assistance, when a violation is found after

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37/ See, e.g., National Governor's Association Reports Online, "Serving Welfare Recipients With Learning Disabilities in a Work First Environment," (July 28, 1998) (attached). In our investigation, we learned that DTA was aware of the recommendations contained in this paper, and that a DTA staff member urged her superiors to take action based on the information the paper contained. See deposition transcript of Katherine Bourne, pages 39-43, 63-65 and deposition exhibits 4 and 5.

38/ DTA employees testified in deposition in the Ramos litigation that such agreements have been discussed, but not formalized or implemented. See deposition transcript of Katherine Bourne, pages 43-45, 50, 115-130 and deposition exhibits 11 and 12; deposition transcript of Margo Blaser, pages 69-76 and deposition exhibit 6. See also deposition transcript of MRC Deputy Commissioner Warren McManus, pages 61-69. In July 2000, the MRC's Director of Statewide Programs told OCR that MRC and DTA were discussing entering into a new Memorandum of Understanding, but that these discussions were still at a preliminary stage. The MRC administrator told OCR that a prior Memorandum of Understanding between the agencies was old and outdated.

opportunity for hearing, or by any other means authorized by law, including a recommendation that the Department of Justice bring an action to enforce Section 504 and or the ADA.

The corrective actions OCR considers necessary in this case are as follows39/:

DTA must:

Modify its procedures to provide for initial screening and, when appropriate, full assessment of TAFDC beneficiaries to determine whether these individuals have learning disabilities, and to determine whether these learning disabilities would interfere with beneficiaries' ability to participate in TAFDC programs;

Based on the assessments described above, provide TAFDC beneficiaries with learning disabilities with sufficient services and programs to ensure that these individuals have an opportunity to benefit from and participate in TAFDC programs that is equal to the opportunity DTA provides to TAFDC beneficiaries who are not disabled;

Ensure that DTA, as well as its contractors and vendors, make reasonable modifications in programs, policies and procedures that are necessary to avoid discrimination based on disability against individuals with learning disabilities;

Eliminate methods of administration that have the effect of subjecting individuals with learning disabilities to disability-based discrimination, including at least: (1) providing adequate training for DTA employees regarding the assessment and provision of appropriate services to individuals with learning disabilities; (2) ensuring that such training, when necessary to avoid discrimination based on disability against individuals with learning disabilities, be provided to DTA contractors and vendors; (3) ensure that technical assistance regarding the needs of, appropriate services and reasonable modifications for individuals with learning disabilities is available to DTA employees and to DTA contractors and vendors; and (4) monitor DTA and DTA contractors and vendors to ensure compliance with any voluntary agreement between DTA and OCR; and

Otherwise determine and implement what relief is appropriate for learning disabled TAFDC beneficiaries as a whole, and for H.R. and A.P. specifically.

39/ In formulating a plan for corrective action, OCR strongly suggests that DTA more aggressively pursue formulating partnerships with other State agencies (including the Department of Education, the Department of Public Health and Massachusetts Vocational Rehabilitation Commission) and other potential providers to provide appropriate assessment, services and reasonable accommodations for disabled TAFDC beneficiaries.

OCR is interested in working with DTA to resolve the violations identified by our investigation in a cooperative and proactive manner, and in providing DTA with technical assistance in making changes to ensure that individuals with learning disabilities have an equal opportunity to benefit from the TAFDC program. To this end, we suggest that representatives of OCR and representatives of DTA meet within approximately 14 days after the date of this letter to discuss necessary corrective actions and specific strategies to ensure that corrective actions are carried out. If DTA does not agree to take the required corrective actions, formal enforcement action may be taken.

OCR determinations do not affect the right of an aggrieved person to file or maintain a private civil action to remedy alleged discrimination by a recipient of Federal financial assistance. Such a person may wish to consult an attorney about his/her right to pursue a private cause of action, any applicable statutes of limitations and other relevant considerations.

Pleased be advised that no recipient may intimidate, threaten, coerce or discriminate against an individual because he or she has made a complaint, testified, assisted or participated in any manner in an action to secure rights protected by the civil rights statutes enforced by OCR. (45 C.F.R. § 80.7(e))

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event OCR receives such a request, we will make every effort to protect, to the extent provided by law, information which identifies individuals or which, if released, would constitute an unwarranted invasion of privacy. (5 U.S.C. § 552)

We wish to thank you for your cooperation during the course of this investigation. If you have any questions, please contact Vicki Hill, Equal Opportunity Specialist, at (617) 565-1344 (voice) or (617) 565-1343 (TDD), or Peter Chan, Deputy Regional Manager, at (617)565-1353.

Sincerely yours,

Caroline J. Chang

Caroline J. Chang
Regional Manager
Office for Civil Rights
Region I

enclosure

cc: Complainants